Supreme Court, U.S.
FILED
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No. 91-2013

In The

Supreme Court of the United States

October Term, 1992

SANDRA L. SANTMYER,

Petitioner,

v.

JUDY A. SANTMYER,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI

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and

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OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

In accordance with Rule 15.1, Rules of the Supreme Court, the Respondent submits that the Question Presented for Review by Petitioner does not accurately depict the issue before this court because it does not accurately reflect the lower court's holding. The opinion of the Eleventh Circuit does *not* state that the written designation requirement of the Servicemen's Group Life Insurance Act (SGLIA) is inapplicable if a court finds that a serviceman's intent is otherwise than the written designation. The opinion of the court below specifically held that *because* the statutory requirements had been met in this case, by a writing signed by the serviceman, received by his service branch prior to his death, and accepted, understood, and acknowledged by the service branch to represent a written change of his SGLI beneficiary, the court would give paramount consideration to the serviceman's intent. The Respondent, therefore, respectfully submits the following Question Presented which more accurately reflects the lower court's holding:

Whether the United States Court of Appeals for the Eleventh Circuit correctly held that a serviceman had satisfied the applicable statutory and regulatory requirements for changing his SGLI beneficiary from his ex-wife to his present wife by taking into consideration the understanding of both the Coast Guard and the serviceman as to the effect of the incorrect written form used by the Coast Guard and the serviceman to change his SGLI beneficiary.

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RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI

The Respondent, Judy A. Santmyer, requests that this court deny the petition for writ of certiorari seeking review of the opinion of the Eleventh Circuit Court of Appeals entered March 17, 1992.

STATUTES AND REGULATIONS INVOLVED[1]

The Servicemen's Group Life Insurance (SGLI) program was created by 38 U.S.C. §§ 701, et seq. Under consideration is section 770 and its implementing regulation which read, in relevant part:

> § 770 – Any amount of insurance . . . shall be paid . . . in the following preference: First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemen's Group Life Insurance . . .
>
> 38 C.F.R. § 9.16(d) – Any designation or change of beneficiary or election of optional settlement will take effect only if it is in writing, signed by

[1] The Petitioner's Brief sets out the specific statutory provision. However, its implementing regulation, on which the Eleventh Circuit also relied, is found only in the District Court's opinion. For this Court's convenience, both are set out here together.

> the insured, and received prior to the death of the insured by his or her uniformed service . . .

District Court opinion, Pet. App. C, A-20.[2]

STATEMENT OF THE CASE

The Respondent, Judy A. Santmyer, cannot accept the Petitioner's Statement of the Case because it also incorporates argument for the Petitioner's position. The Respondent generally adopts the statement of the case and facts set out in the opinion of the court below and includes, in Respondent's Appendix, those documents on which the court relied. Eleventh Circuit opinion, Pet. App. B, A-9 to A-12.

In August, 1988, Richard Santmyer completed a new Coast Guard "Record of Emergency Data" (RED) form designating his present wife Judy as beneficiary for unpaid pay or allowance and as beneficiary of his pay in the event he was missing. Pet. App. E, A-24 to A-25. The former RED had designated his ex-wife Sandra. Although the RED form stated that it did not designate SGLI beneficiaries, which required a new and separate VA form, both Richard and Teresa Morgado, the Coast Guard clerk who filled out the new RED, believed that it effectively designated Judy as Richard's SGLI beneficiary as well. Morgado, in fact, said that she typed the SGLI policy amount of $50,000 on the new RED form to reflect an

[2] All references to the Petitioner's Appendix will be referred to as "Pet. App." All references to the Respondent's Appendix will be referred to as "Resp. App."

increase in those policy benefits. Pet. App. B, A-9 to A-10; Resp. App. A, 1a-2a.

In August, 1989, at Richard's request, Gale Hockman, the unit clerk at his new reserve unit, confirmed to Richard that Judy was designated to receive his SGLI benefits because she was the designated beneficiary on Richard's current RED form. Pet. App. B, A-10; Resp. App. B, 3a-4a. In May, 1990, again at Richard's request and while he lay in the hospital, Janet B. Gammon, the administrative officer of Richard's reserve unit, contacted the Coast Guard district headquarters and again confirmed for Richard that the current RED form designated Judy as Richard's SGLI beneficiary. Richard died shortly thereafter. Pet. App. B, A-10; Resp. App. C, 5a-6a.

On November 6, 1990, the Coast Guard official in charge of death benefits sent a letter to Judy informing her that "records at Coast Guard Headquarters show that your husband designated you to receive the Servicemen's Group Life Insurance." Pet. App. B, A-10; Resp. App. D, 7a-8a. A "Report of Casualty" issued by the Coast Guard on the same date, in referring to SGLI benefits, stated "Designation of beneficiary: Yes – Judy Arlene Santmyer." Pet. App. B, A-10; Resp. App. E, 9a-10a. On December 20, 1990, however, the Coast Guard wrote to Judy telling her that the RED form on file was not effective because the SGLI beneficiary change should have been made on a new VA form and that the old VA form on file designated Sandra as Richard's SGLI beneficiary. Pet. App. B, A-10 to A-11.

Judy sued Sandra and the insurance carrier, Prudential, for the SGLI benefits. Prudential deposited the proceeds into the court registry and was dismissed. The Middle District of Florida granted summary judgment to Judy and Sandra appealed. Pet. App. B, A-11. The Eleventh Circuit Court of Appeals affirmed, finding that "Richard Santmyer satisfied the applicable requirements for changing his SGLI beneficiary." Pet. App. B, A-12.

In so holding, the Eleventh Circuit noted that the statute and its implementing regulation did not require a specific form for designating SGLI beneficiaries, even if the Coast Guard did. Pet. App. B, A-12. The Eleventh Circuit also held that the Coast Guard officials "understood" and "believed" that they had received a written notice of Richard's change of SGLI beneficiary to Judy prior to Richard's death. Pet. App. B, A-12.

The Eleventh Circuit concluded that, based on the Coast Guard's knowledge that the current RED form was intended by Richard to designate Judy as his SGLI beneficiary, "the RED form was effective to designate Judy as the beneficiary under the applicable statute and regulations." Furthermore, the court reasoned that "so long as the statutory requirements are met," it would give paramount consideration to Richard's intent. Pet. App. B, A-12.

REASONS FOR DENYING THE WRIT

POINT I

THE ELEVENTH CIRCUIT CORRECTLY FOUND THAT RICHARD SANTMYER SATISFIED THE CONTROLLING STATUTE AND REGULATION TO EFFECT A CHANGE OF HIS SGLI BENEFITS TO HIS CURRENT WIFE, JUDY, DESPITE HAVING COMPLETED THE INCORRECT COAST GUARD FORM

The Eleventh Circuit obviously recognized that the Coast Guard had simply provided Richard Santmyer with the wrong form, a RED, to change his SGLI beneficiary and that no one had read the section on the RED form which stated that a separate VA form, not a RED, should be used for that purpose. Despite the disclaiming language, the Coast Guard acknowledged to both Richard, and later to Judy, that it considered the current RED to be Richard's written designation of his SGLI beneficiary change. Since the statute and the regulation regarding SGLI benefits accepts *any* "writing," the Eleventh Circuit correctly ruled that the statutory requirements were satisfied.

The Eleventh Circuit did not reject the statute and substitute a criteria of intent by Richard, as argued by Petitioner. To the contrary, the court below focused on the fact that the Coast Guard itself understood and believed that the current RED form was a designation of Richard's change of beneficiary, in writing, signed by Richard and received by the Coast Guard prior to his death. Again and again, even on Richard's deathbed, the Coast Guard officials assured Richard that his current RED represented, to them, a record of an effective change of SGLI benefits to his present wife, Judy.

The crux of the Petitioner's argument is that never, under any circumstances, could the RED constitute the "writing" evidencing a change of beneficiary for SGLI benefits, because the form says otherwise. The Petitioner, however, fails to cite to any caselaw that makes such a broad declaration. In fact, in *Prudential Insurance Company of America v. King*, 453 F.2d 925, 929 (8th Cir. 1971), the court noted that the statute does not specify that any particular form be used, but only requires "a writing" received by the service branch prior to death. *See also Stribling v. United States*, 419 F.2d 1350, 1355 n.12 (8th Cir. 1969). Receipt of the writing by the uniform service occurs when the serviceman hands the writing naming the beneficiary to the person to whom the service had put in charge of receiving and maintaining such designations. *Coomer v. United States*, 471 F.2d 1, 5 (5th Cir. 1973).

In *Stribling*, 419 F.2d at 1350, the court held that a soldier did not effectively change his SGLI policy beneficiary by merely mailing a copy of a change of beneficiary form to his mother. The court noted that the serviceman's actions did not comply with statutory requirement because, although he evidenced an intent to change beneficiaries, "this purported change of beneficiary designation had not come to the attention of either Appellee, the Prudential Insurance Company of America or the United States Army prior to [his] death." *Id.* at 1351. In the case at hand, however, a writing made by Richard to reflect both Richard's and the Coast Guard's understanding that his SGLI beneficiary was changed to his current wife certainly came to the attention of the Coast Guard prior to Richard's death. Both the writing and notice requirements of the statute were satisfied here.

The *Stribling* decision continues to be cited for the proposition that the "notice" (to the service) requirement of the statute will be strictly construed. In *Prudential Insurance Company of America v. Smith*, 762 F.2d 476, 481 (5th Cir. 1985), the Fifth Circuit was called on to examine the strict constructionist doctrine established by the *Stribling* court. The *Smith* court noted that *Stribling* did not hold that any particular writing is required or that some writings, if filed, would not be given effect. *Id.* at 481. Significantly, the *Smith* court also held that *Stribling* did not stand for the proposition that a "simultaneously-filed Record of Emergency Data (RED) form is irrelevant in determining a [serviceman's] intent." *Id.* Instead, in a footnote, the *Smith* court noted that after its decision in *Stribling*, the Eighth Circuit clarified its position, holding that a serviceman's failure to use the proper official form for designating a beneficiary should not override the serviceman's will or intent. *Id.* at n.7 (citing to *Prudential Insurance Company v. King*, 453 F.2d 925, 929 (8th Cir. 1971)).

The evolution of the *King* holding is significant. In *Prudential Insurance Company v. King*, 324 F.Supp. 1236 (W.D. Mo. 1970), *aff'd*, 453 F.2d 925 (8th Cir. 1971), the district court noted that in *Stribling*, the Eighth Circuit had rejected the earlier liberal policy of the courts *only* with regard to the explicit notice requirement of § 770(a), *i.e.*, that the writing be received in the uniform services prior to the serviceman's death. *Stribling*, 419 F.2d at 1352. However, with respect to the *form* of the writing (on a form other than the one designated by the military to be used for such a change), the "liberal policy" still applied. *King*, 324 F.Supp. at 1243.

On appeal, the Eighth Circuit agreed with the district court's reasoning. *Prudential Insurance Company of America v. King*, 453 F.2d 925 (8th Cir. 1971). Expanding on its earlier holding in *Stribling*, which is oft-quoted for the pronouncement that the SGLI Act, including its writing requirement, be strictly construed, the Eighth Circuit in *King* explained that a serviceman's "failure to use" the official form for designating a beneficiary "certainly . . . should not be a vehicle by which the serviceman's will or intent could be nullified." *Id.* at 929.

Richard Santmyer's use of the RED form to change his SGLI beneficiary to Judy Santmyer – coupled with the Coast Guard's understanding that the RED form represented Richard's written request to change his SGLI beneficiary to his current wife, Judy – satisfied the statutory and regulatory requirements pertaining to SGLI benefits. Since the statute does not require that Richard use the VA form, but requires only that there be a designation by "a writing received prior to death," this criteria had been satisfied by Richard's actions and the Coast Guard's acknowledgment. The record demonstrates that both Richard and the Coast Guard representatives believed that the RED form, despite the initially overlooked disclaiming language contained therein, nevertheless served the purpose of designating Judy as the beneficiary of Richard's SGLI policy.

POINT II

THERE IS NO CONFLICT BETWEEN THE ELEVENTH CIRCUIT'S DECISION AND ANY OTHER DECISION OF A CIRCUIT COURT OF APPEAL OR THIS COURT

The cases cited by the Petitioner to demonstrate conflict are inapplicable. In *Wissner v. Wissner*, 338 U.S. 655 (1950), a widow claimed entitlement to a serviceman's benefits under California community property law. This court held that under federal law, only a serviceman's notice to the service branch by a writing could operate to change a serviceman's beneficiary. In *Ridgeway v. Ridgeway*, 454 U.S. 46 (1981), this court held that a state divorce decree ordering a serviceman to keep a policy in force for his children could not override the controlling provisions of the SGLI Act under which the insured service member may freely designate his beneficiary and alter his choice at any time. *Coomer v. United States*, 471 F.2d 1, 3 (5th Cir. 1973) stands for the proposition that once the service branch receives a writing from a serviceman naming a beneficiary, the fact that the writing is later lost, destroyed, stolen, or misplaced will not nullify the serviceman's choice.

As discussed in Point I, the *Smith*, *King* and *Stribling* decisions all support or are in accord with the Eleventh Circuit's decision. Certainly, the Petitioner has demonstrated no true, acknowledged conflict between any of the decisions cited and the holding of the Eleventh Circuit in this case. There is nothing to support the Petitioner's argument that the SGLI proceeds can belong to no one other than the person designated in writing in the *appropriate* form received by the service branch. The fact that Richard Santmyer used an inappropriate form is

irrelevant in light of the Coast Guard's receipt of a writing by Richard prior to his death which the Coast Guard understood to designate the Respondent, Judy Santmyer, as Richard's SGLI beneficiary.

CONCLUSION

For these reasons, the petition for writ of certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit should be denied.

Respectfully submitted,

BONITA L. KNEELAND
Counsel of Record

and

RICHARD M. SEBEK
FOWLER, WHITE, GILLEN, BOGGS,
VILLAREAL & BANKER, P.A.
Post Office Box 1438
Tampa, FL 33601
(813) 228-7411
Attorneys for Respondent

APPENDIX A

AFFIDAVIT OF WN3, THERESA MORGADO

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, TERESA MORGADO, swear and affirm that the information set forth herein is within my personal knowledge and is true and accurate:

1. I am a Coast Guard reservist holding the rating of Yeoman Third Class (YN3). I have been stationed at Coast Guard Reserve Unit Station St. Petersburg since I enlisted in the reserves in 1986. My job as a Yeoman is to maintain service records and attend to the administrative needs of the reserve unit and its personnel. In the course of my duties, I receive, file and route as necessary, documents completed by reserve unit members.

2. On or about August 28, 1988, I met with then Ensign Richard Santmyer who had must [sic] returned from Yorktown, Virginia following his reserve officer's candidate indoctrination school. Mr. Santmyer had been assigned to Coast Guard Reserve Unit St. Petersburg, and I was processing him into the unit.

3. On that date, Mr. Santmyer and I filled in the Record Of Emergency Data form (CG-4113) which is attached as exhibit A to this Affidavit.

4. At Ensign Santmyer's request, I took out an old Record of Emergency Data form containing his ex-wife's name and replaced it with a new one, which I prepared at Richard Santmyer's request, naming Judy A. Santmyer as

a beneficiary. I saw Richard Santmyer sign that form. I signed it also.

5. Based upon my courses and discussions with Senior Yeomen at the unit, it was my belief that the CG-4113 designated the person who would receive any and all benefits to which a reservist was entitled, including his SGLI benefits. This is so because we were required to check in a block on the form as to the amount of SGLI coverage. In fact, I typed in the policy amount of $50,000.00 on the form to reflect the increase of the policy benefits.

FURTHER AFFIANT SAYETH NOT

/s/ Teresa Morgado
YN3 TERESA MORGADO

Sworn to and subscribed before me by Tersa Morgado, the testator, and by --- and ---, the witnesses, on February 7, 1991.

/s/ Patricia A. Craven
Notary Public

(Notary Seal)

My Commission Expires:

Notary Public State of Florida
My Commission Exp. Feb. 9, 1991
Bonded Thru General Ins. Und.

APPENDIX B

AFFIDAVIT OF GAIL HOCKMAN

STATE OF FLORIDA

COUNTY OF ALAUCHA

I, GAIL HOCKMAN, swear and affirm that the information set forth herein is within my personal knowledge and is true and accurate:

1. I am a Coast Guard reservist holding the rating of Yeoman Third Class (YN3). My job as a Yeoman is to maintain service records and attend to the administrative needs of the reserve unit and its personnel.

2. On or about August of 1989, I was stationed at Coast Guard Reserve Detachment Clearwater, a new unit which was being established. Ensign Richard Santmyer was also attached to that detachment.

3. On or about that date, we were reviewing the Record Of Emergency Data form (CG-4113) in preparation for an inspection. I personally reviewed Mr. Santmyer's form with him, and we discussed it at length. Based upon my course work in the YN rate and discussions with other YN's, it was my belief that the Record Of Emergency Data form designated the beneficiary of the SGLI policy.

4. While discussing the SGLI portion of the form, I asked Mr. Santmyer to verify who he wanted designated as the beneficiary of that policy. Ensign Santmyer told me that he wanted his wife, Judy A. Santmyer, to be the beneficiary of the SGLI policy.

5. I told him that the form already indicated that Judy was named as the beneficiary of that policy. He then signed the form in the required space.

FURTHER AFFIANT SAYETH NOT

/s/ YN3 Gale Hockman
YN3 GAIL HOCKMAN

Sworn to and subscribed before me by Gale Hockman, the testator, and by Robert L. Hockman and Joye Joseph, the witnesses, on Feb. 9, 1991.

/s/ Joye Joseph

Notary Public

(Notary Seal)

My Commission Expires: 11/30/93

APPENDIX C

AFFIDAVIT OF JANET B. GAMMON

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I, JANET B. GAMMON, swear and affirm that the information set forth herein is within my personal knowledge and is true and accurate:

1. I was, and still am, the unit administrative officer of Coast Guard reserve station Clearwater since its inception as a detachment, and up to the present time. I hold the rank of Lieutenant (LT). My responsibilities include ensuring that the administrative policies relating to personnel, supply and general correspondence of the Coast Guard are followed at the unit level.

2. On or about May of 1990, I spoke with LT (jg) Richard Santmyer who was also attached to Coast Guard Reserve Unit Station Clearwater. He advised me that he wanted to make sure that Judy Santmyer received all of his Coast Guard benefits, including the Service Group Life Insurance policy.

3. In August of 1990, I heard that LT (jg) Santmyer was in the hospital. I then called district headquarters in Miami, Florida and spoke with Chief Warrant Officer Vern Szlusniak and Chief Petty Officer Bowles. We talked about LT (jg) Santmyer, specifically whether Judy A. Santmyer was the beneficiary of the SGLI policy.

4. I was advised by Chief Petty Officer Bowles that based upon his review of LT (jg) Santmyer's service record, a current Record Of Emergency Data form was on

file and Judy A. Santmyer was the designated beneficiary of the SGLI policy and any other unpaid pay or allowances.

5. I later informed Judy Santmyer of what Chief Bowles told me and asked her to inform Richard.

FURTHER AFFIANT SAYETH NOT

/s/ Janet B. Gammon
JANET B. GAMMON

Sworn to and subscribed before me by Janet B. Gammon, this 8th day of February, 1991.

/s/ Monica L. Daniel
Notary Public

(Notary Seal)

My Commission Expires:

Notary Public State of Florida
My Commission Expires: March 12, 1993
Bonded Thru Agent's Notary Brokerage

APPENDIX D

Commandant United States Coast Guard

U.S. Department
of Transportation

United States
Coast Guard

Washington, D.C. 20593-0001
Staff Symbol
Phone:
G-PS-5
1-800-424-7950

1770
6 November 1990

Mrs. Judy Arlene Santmyer
5210 Lloyd Street
Seffner, FL 33584

Dear Mrs. Santmyer:

Information has been received at Coast Guard Headquarters of the death of your husband, LTJG Richard D. SANTMYER, USCGR, Inactive. I wish to extend to you and your family my sincere sympathy in your loss.

The enclosed forms are forwarded to aid you in filing for Burial Allowance and a Headstone or Marker to which there may be entitlement.

Veterans Administration Form No. 21-534, Applications for Dependency and Indemnity Compensation or Death pension by Surviving Spouse or Child, is also enclosed. Upon completion, this form should be forwarded to your local Veterans Administration office in order for them to adjuidicate your claim for possible entitlement.

The records at Coast Guard Headquarters show that your husband designated you to receive the Servicemen's Group Life Insurance. All matters pertaining to the settlement of this insurance are entirely within the jurisdiction

of the Office of the Servicemen's Group Life Insurance, 212 Washington Street, Newark, NJ 07102. The enclosed form, Claim for Death Benefits, should be sent direct to that office as well as any subsequent inquiries you may have regarding the settlement. A notification of your husband's death has been forwarded to them.

A pre-addressed envelope is enclosed for your convenience.

Sincerely,

/s/ R. R. Harber
R. R. HARBER
Chief, Military Retired
Benefits and Decedent
Affairs Branch
Personnel Services Division
By direction of the
Commandant

Encl: (1) Form No. 21-530
(2) Form No. 21-534
(3) Form No. DD-1330
(4) Form No. 29-8283
(5) Envelope

APPENDIX E

U.S. COAST GUARD

WASHINGTON, D.C. 20591

REPORT OF CASUALTY

REPORT NUMBER AND TYPE FINAL

DATE PREPARED 6 NOV 1990

1. SERVICE IDENTIFICATION (Name, Service Number, Grade or Rate, Component, Branch and Organization)

   SANTMYER, Richard Dean 263 88 4399 LTJG, USCGR, INACTIVE

2. CASUALTY STATUS

   _ BATTLE
   X NONBATTLE

   Died: 17 August 1990

   Cause: Respiratory arrest

   Place: Seffner, FL

3. DATE AND PLACE OF BIRTH, RACE, RELIGIOUS PREFERENCE

   24 May 1946 Salina, KS

4. DATE AND PLACE OF LAST ENTRY ON ACTIVE DUTY IN CURRENT STATUS AND HOME OF RECORD AT TIME

   NOT APPLICABLE

5. SOCIAL SECURITY NUMBER, PAY GRADE, LENGTH OF SERVICE FOR PAY, BASIC PAY, INCENTIVE PAY

   263 88 4399 0-2 over 16 years service $2212.20 per mo.

CHECK IF APPLICABLE

___ CREW ___ NONCREW

6. DUTY STATUS

INACTIVE RESERVE

7. INTERESTED PERSONS (NAME, ADDRESS, RELATIONSHIP)

Judy Arlene Santmyer, widow, 5210 Lloyd Street, Seffner, FL 33584

8. REPORT FOR VA TO FOLLOW

___ YES _x_ NO

9. REPORTING COMMAND AND DATE REPORT RECEIVED IN DEPARTMENT

COGARD RU STATION CLEARWATER FL – 21 August 1990

10. SELECTIVE SERVICE NUMBER, LOCAL BOARD, AND LOCATION (*If unknown, enter date and place of first entry in Armed Services)*

8 177 46 267 #177, Miami, FL

11 May 1965 – San Diego, CA – USCG

11. PRIOR SERVICE DATA

___ YES _x_ NO

12. REMARKS

NO SGLI PREMINUMS [sic] DUE

Servicemen's Group Life Insurance – $50,000.00
Method of pay – $4.00 per month
Designation of beneficiary: YES – Judy Arlene Santmyer (See Attached)

Application for benefits forwarded to: Judy Arlene Santmyer, widow

PAY AND ALLOWWANCES [sic] DISCONTINUED ON DATE OF DEATH

ALLOTMENTS IN EFFECT FOR DEPENDENTS

FOOTNOTES:

1 Illegible

2 Beneficiary for gratuity pay in event there is no surviving wife or child – as designated on record of emergency data.

3 Beneficiary for unpaid pay and allowances – as designated on record of emergency data.

13. DISTRIBUTION

VA
SGLI Newark, NJ

14. SIGNATURE (By direction of the Commandant)

R. R. HARBER
Chief, Military Ret., Benefits & Decedent Affairs Branch

DD
FORM
1 MAR 80
1300